Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

(T.D. 74–107)

Bonded Carriers

Approval and discontinuance of carrier bonds, Customs Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 21, 1974.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Air Trans Motor Service, Inc., dba Air Trans Airlines, Logan Int'l Airport, E. Boston, Mass., air & motor carrier; St. Paul Fire & Marine Ins. Co.	June 18, 1973	Feb. 4, 1974	Boston, Mass.; $25,000
Avex Corp., P.O.B. 17027, Nashville, Tenn., air carrier; Reliance Ins. Co.	Jan. 18, 1974	Feb. 15, 1974	New Orleans, La.; $25,000
Blalock Truck Lines, Inc., P.O.B. 734, Charleston, S.C., motor carrier; The Ohio Casualty Ins. Co. (PB 1/11/71) D 3/4/74 [1]	Feb. 25, 1974	Mar. 4, 1974	Charleston, S.C.; $25,000
Campbell's Auto Express, Lambs Rd. & Laurel Dr., Pitman, N.J., motor carrier; Hartford Accident & Indemnity Co. D 12/6/73	Jan. 1, 1973	Jan. 16, 1973	Philadelphia, Pa.; $50,000
Convoy Co., 3900 NW. Yeon Ave., Portland, Ore., motor carrier; Mid-Century Ins. Co. (PB 2/27/68) D 2/28/74 [2]	Feb. 27, 1974	Feb. 28, 1974	Portland, Oreg.; $25,000
Hennis Freight Lines, Inc., P.O.B. 612, Winston-Salem, N.C., motor carrier; Insurance Co. of N. America (PB 1/1/68) D 2/27/74 [3]	Feb. 1, 1974	Feb. 28, 1974	Wilmington, N.C.; $25,000

See footnote at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Hicklin Motor Lines, Inc., P.O.B. 377, St. Matthews, S.C., motor carrier; Reliance Ins. Co.	Jan. 7, 1974	Jan. 22, 1974	Charleston, S.C.; $25,000
Kale Equipment Rental, Inc., Milnor & Bleigh Sts., Philadelphia, Pa., motor carrier; Commercial Union Ins. Co.	Sept. 15, 1973	Jan. 25, 1974	Philadelphia, Pa.; $50,000
Leonard Bros. Trucking Co., Inc., P.O.B. 602, Miami, Fla.; motor carrier; Fidelity & Deposit Co. of Md.	Jan. 25, 1974	Feb. 8, 1974	Miami, Fla.; $25,000
Wesley Marks dba Marks Dispatch, 33 Earle St., Somerville, Mass., motor carrier; Liberty Mutual Ins. Co. (PB 2/9/72) D 2/6/74 [4]	Feb. 1, 1974	Feb. 6, 1974	Boston, Mass.; $25,000
Motor Express, Inc., 410 Lincoln Bldg., 1367 E. 6th St., Cleveland, Ohio, motor carrier; Seaboard Surety Co. (PB 2/19/69) D 2/19/74 [5]	Feb. 19, 1974	Feb. 19, 1974	Cleveland, Ohio; $25,000
Mr. Messenger, Inc., 10 Messenger Dr., Warwick, R.I., motor carrier; The Aetna Casualty & Surety Co.	Jan. 18, 1974	Feb. 4, 1974	Providence, R.I.; $25,000
Needham's Motor Service, Inc., P.O.B. 138, Highstown, N.J., motor carrier; Federal Ins. Co. D 1/22/74	Nov. 16, 1968	Jan. 7, 1969	Philadelphia, Pa.; $25,000
Pace Motor Lines, 132 W. Dudley Town Rd., Bloomfield, Conn., motor carrier; Peerless Ins. Co.	Feb. 12, 1974	Feb. 26, 1974	Bridgeport, Conn.; $25,000
Port City Airline, Inc., Central Cargo Terminal Logan Int'l Airport, E. Boston, Mass., air & motor carrier; St. Paul Fire & Marine Ins. Co. D 2/4/74	Nov. 27, 1972	Dec. 18, 1972	Boston, Mass.; $25,000
Querner Truck Lines, Inc., 1131-33 Austin St., San Antonio, Tex., motor carrier; Fidelity & Deposit Co. of Md.	Oct. 2, 1973	Jan. 29, 1974	Laredo, Tex.; $25,000
Russell Trucking, Inc., P.O.B. 307, Combes, Tex., motor carrier; The Home Indemnity Co. (PB 1/11/71) D 1/29/74 [6]	Jan. 11, 1974	Jan. 29, 1974	Laredo, Tex.; $30,000
Thompson Bros. Inc., & its sub. Thompson Bros. Freight Forwarding Co., Inc., 21001 Cabot Blvd., Hayward, Calif., motor carrier; Industrial Indemnity Co. (PB 7/12/71) D 2/15/74 [7]	Jan. 28, 1974	Feb. 15, 1974	San Francisco, Calif.; $25,000
Wells Cargo, Inc., 1775 E. 4th St., Reno, Nev., motor carrier; Argonaut Ins. Co. (PB 1/26/71) D 2/11/74	Jan. 26, 1974	Feb. 11, 1974	San Francisco, Calif.; $50,000
Williamson Truck Lines, Inc., Wilson, N.C., motor carrier; U.S. Fidelity & Guaranty Co.	Jan. 25, 1974	Feb. 26, 1974	Wilmington, N.C.; $25,000

[1] Surety is The Home Indemnity Co.
[2] Surety is General Ins. Co. of America
[3] Surety is Royal Indemnity Co.
[4] Surety is The Continental Ins. Co.
[5] Surety is Peerless Ins. Co.
[6] Surety is U.S. Fire Ins. Co.
[7] Surety is Mid-Century Ins. Co.

(BON-3-03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 74-108)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 21, 1974.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Acorn Beverage Co., 1929 S. Hooper Ave., Los Angeles, Calif.; St. Paul Fire & Marine Ins. Co. D 2/6/74	Dec. 2, 1968	Dec. 9, 1968	Los Angeles, Calif.; $10,000
Alfred J. Farone, Inc., 63 Putman St., Saratoga Springs, N.Y.; Fireman's Fund Ins. Co.	Sept. 5, 1968	Sept. 12, 1968	Ogdensburg, N.Y.; $10,000
Loading Service Co., Inc., P.O.B. 1309, Medford, Ore.; Peerless Ins. Co.	Dec. 14, 1973	Feb. 28, 1974	Chicago, Ill.; $10,000
Mini Carrier Services Inc., 5420 Interstate 55, N. Jackson, Miss.; St. Paul Fire & Marine Ins. Co. D 3/1/74	Jan. 15, 1971	Jan. 15, 1971	New York Seaport; $10,000
Southern Marine Agencies, Inc., 300 Poydras St. Bldg., New Orleans, La.; St. Paul Fire & Marine Ins. Co.	Mar. 1, 1974	Mar. 1, 1974	New York Seaport; $10,000
Southland Beverage Distributing, Inc., 711 Sycamore St., Anaheim, Calif.; Peerless Ins. Co.	Feb. 4, 1974	Feb. 6, 1974	Los Angeles, Calif.; $10,000
Royale Rolls, Inc., 1135 William St., Buffalo, N.Y.; Liberty Mutual Ins. Co. D 11/14/73	July 11, 1972	Oct. 3, 1972	Buffalo, N.Y.; $10,000
Welland Chemical of Canada Ltd., of the Prov. of Ontario, 28 Bathurst St., Toronto, Ontario, Canada; Transamerica Ins. Co. (PB 4/7/71) D 2/22/74 [1]	Jan. 22, 1974	Feb. 22, 1974	Buffalo, N.Y.; $10,000

[1] Surety is Maryland Casualty Co.

(BON-3-10)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 74–109)

Wool textile products—Restriction on entry

Restriction on entry of wool textile products in category 121 manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 21, 1974.

There is published below the directive of March 13, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of wool textile products in category 121 manufactured or produced in the Republic of Korea. This directive amends but does not cancel the Committee's directive of January 29, 1974 (T.D. 74–58).

This directive was published in the Federal Register on March 18, 1974 (39 FR 10178), by the Committee.

(QUO–2–1)

R. N. MARRA,
Director
Duty Assessment Division

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 13, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on January 29, 1974 by the Chairman of the Committee for the Implementation of Textile Agreements regarding imports into the United States of wool textile products in Category 121 produced or manufactured in the Republic of Korea.

The first paragraph of the directive of January 29, 1974 is hereby amended to show a level of restraint of 177,758 units for Category 121

produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on October 1, 1973 and extends through September 30, 1974. This amended level of restraint reflects entries made through November 30, 1973. No adjustment has been made to reflect any entries made after November 30, 1973.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74–110)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 19, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 74–40 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs pur-

poses to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Switzerland franc:	
March 11, 1974	$0.3248
March 12, 1974	.3238
March 13, 1974	.3241
March 14, 1974	.3210
March 15, 1974	.3218

(LIQ-3-0:D:T)

R. N. MARRA,
Director
Duty Assessment Division

[Published in the Federal Register March 28, 1974 (39 FR 11444)]

(T.D. 74-111)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 26, 1974.

There are published below directives of March 14, 1974, recieved by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, regarding levels of restraint for cotton textiles and cotton textile products in certain categories manufactured or produced in Mexico. These directives further amend but do not cancel that Committee's directive of April 25, 1973 (T.D. 73-127), and December 27, 1973 (T.D. 74-30).

These directives were published in the Federal Register on March 20, 1974 (39 FR 10479), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director
Duty Assessment Division

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 14, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On April 25, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning May 1, 1973 of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Mexico, in excess of designated levels of restraint. These levels were amended by the directive of November 15, 1973. The Chairman also advised you that the levels of restraint are subject to adjustment.[1]

Pursuant to paragraph 8(a) of the Bilateral Cotton Textile Agreement of June 29, 1971, as amended, between the Governments of the United States and Mexico, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed further to increase, effective as soon as possible, the levels of restraint, as amended, established in the directive of November 15, 1973 for Category 22/23 by 643,781 square yards and Category 26/27 and part of 64 (knit fabrics) by 899,062 square yards. The level of restraint for Categories 5-27 and part of 64 should also be increased to 1,542,843 square yards.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of June 29, 1971, as amended, between the Governments of the United States and Mexico which provide, in part, that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 14, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive further amends but does not cancel the directive issued to you on December 27, 1973 by the Chairman of the Committee for the Implementation of Textile Agreements pursuant to an offer by the United States Government to all bilateral cotton textile agreement partners to export on a one-time basis additional cotton yarn and/or fabric, not to exceed in total amount five percent of the current-year aggregate agreement ceiling of each country. The directive of December 27, 1973 was previously amended on January 18, 1974.

Paragraph 2 of the directive of December 27, 1973 is hereby amended to change the entry for Category 26/27 and part of 64 from Mexico to read as follows:

Country	*Category*	*Additional Amount*
Mexico	26/27 and part of 64 (knit fabrics)	1,407,763 square yards of which not more than 1,000,000 square yards shall be in Category 26 (duck) [2]

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of

Customs, being necessary to the implementation if such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-112)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 25, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:

March 11, 1974	$0.1975
March 12, 1974	.1975
March 13, 1974	.1975
March 14, 1974	.1975
March 15, 1974	.1970

Iran rial:

For the period March 11 through March 15, 1974, rate of $0.0149.

Philippine peso:

March 11, 1974	$0.1490
March 12, 1974	.1490
March 13, 1974	.1490
March 14, 1974	.1490
March 15, 1974	.1495

Singapore dollar:

March 11, 1974	$0.4045
March 12, 1974	.4045
March 13, 1974	.4050
March 14, 1974	.4045
March 15, 1974	.4030

Thailand baht (tical)

For the period March 11 through March 15, 1974, rate of $0.0495.

(LIQ-3-0:A:E)

R. N. MARRA,
Director
Duty Assessment Division

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4502)

DITBRO PEARL CO., INC. *v.* UNITED STATES

Ladies' belts (chain)

Court No. 71-5-00113

Port of New York

[Motion for rehearing denied.]

(Dated March 11, 1974)

Barnes, Richardson & Colburn (*Joseph Schwartz* and *Irving Levine* of counsel); *Rode & Qualey* (*John S. Rode* of counsel) associate counsel; for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

LANDIS, Judge: In its contested motion for rehearing of *Ditbro Pearl Co., Inc.* v. *United States*, 72 Cust. Ct. —, C.D. 4497 (1974),

plaintiff asks the court to reconsider plaintiffs's claim that abstracted Bureau decisions of general interest affecting classification, including one which classified ladies' chain belts as chain or chains under TSUS item 652.38, constituted a finding of an established practice requiring notice of change under section 315(d), Tariff Act of 1930, as amended, 19 U.S.C., section 1315(d).

Replying to plaintiff's contention on rehearing that the abstracted Bureau decision T.D. 68–77(3), 2 Customs Bulletin 157 (one of twenty-one Bureau decisions abstracted under T.D. 68–77, most of which dealt with classification matters) is *ipso facto* a finding by the Bureau of a uniform and established practice under section 315(d), it is again pertinent to note as stated in the previous opinion herein (C.D. 4497) that "plaintiff cites no case and I find none which sustains the general proposition that the mere publication of a Bureau abstracted decision on the classification of merchandise establishes a uniform practice for classifying the merchandise and requires a subsequent notice under section 315(d) if the practice is to change." Plaintiff's contention, without any legal authority to support it, is clearly untenable.

I would also observe that the court knows nothing whatever of the manner or extent to which the Bureau might consider itself bound by an abstracted Bureau decision;[1] knows none of the facts underlying the abstracted Bureau decision (T.D. 68–77(3)) classifying "Aluminum ladies belts, consisting of 36 inch lengths of aluminum chain with a small brass hook attached to one of each length" as chain or chains and, accordingly, cannot know nor is there any proof that the imported ladies' gold colored chain belts are the same as the aluminum ladies' belts covered by the abstracted Bureau ruling. Cf. *United States* v. *Edward I. Petow & Son, etc.*, 34 CCPA 55, C.A.D. 343 (1946); *United States* v. *Electrolux Corporation*, 46 CCPA 143, 150, C.A.D. 718 (1959) (dissenting opinion); *Koeller-Struss Co.* v. *United States*, 12 Ct. Cust. Appls. 189, 191, T.D. 40170 (1924); *B. A. McKenzie & Co., Inc.* v. *United States*, 39 Cust. Ct. 52, 55, 56, C.D. 1903 (1957); *Air Clearance Ass'n, Inc.* v. *United States*, 37 Cust. Ct. 138, 143, C.D. 1813 (1956); *Detroit & Canada Tunnel Corp.* v. *United States*, 10 Cust. Ct. 32, 36, C.D. 717 (1943).

The motion for rehearing is denied.

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[1] See, T.D. 66–125, 101 Treas. Dec. 363 (1966), quoted by plaintiff in support of this motion, but discussed in a context quite different from the actual context of what is quoted.

(C.D. 4503)

AVINS INDUSTRIAL PRODUCTS CO. *v.* UNITED STATES

Metal products—Wire

Stainless steel wire, type 302, in varying lengths from 12″ to 26.5″, not over 0.703″ in maximum cross-sectional dimension, held properly assessed with duty under item 609.45, Tariff Schedules of the United States, as round wire of alloy iron or steel, plus additional duty on the chromium content in excess of 0.2 per centum under item 607.01, rather than under item 685.25, as unfinished parts of antennas for automobile radio receivers.

PARTS, UNFINISHED—SCHEDULE 6, PART 2

Unfinished parts of an article are classifiable as parts under the Tariff Schedules of the United States, unless the context requires otherwise. General Interpretative Rule 10(h).

Merchandise which has progressed to the point of being an unfinished part is precluded from classification under schedule 6, part 2, by virtue of headnote 1(iv), where it is elsewhere provided for as a part, unless the context requires otherwise.

PARTS, UNFINISHED—MATERIAL

A thing may be classified as an unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit only for use as that article and is incapable of being made into more than one article or class of articles.

WIRE—PARTS, UNFINISHED—CONSTRUCTION—CONGRESSIONAL INTENT

Congress intended merchandise encompassed within the definition of wire in headnote 3(i), schedule 6, part 2B, to be classed as wire and not as an unfinished part or article, whether or not it is cut to length and is in certain dimensions making it particularly adaptable for a certain use.

Merchandise falling within the definition of wire is not a part, finished or unfinished, within the intent of Congress and is not precluded from classification under item 609.45 by virtue of headnote 1(iv), schedule 6, part 2.

Court No. 72-3-00709

Port of New York

[Judgment for defendant.]

(Decided March 12, 1974)

Donohue and Shaw (*Charles P. Deem* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

RAO, Judge: The merchandise in this case consists of stainless steel wire, type 302, imported in varying lengths from 12″ to 26.5″,

not over 0.703" in maximum cross-sectional dimension. It was assessed with duty under item 609.45, Tariff Schedules of the United States, at 10.5 per centum ad valorem, as round wire of alloy iron or steel, plus 0.9 cents per pound on the chromium content in excess of 0.2 per centum under item 607.01. It is claimed that the merchandise constitutes parts of antennas for automobile radio receivers and is properly dutiable under item 685.25 at 7 per centum ad valorem.

The pertinent provisions of the tariff schedules are as follows:

> General Headnotes and Rules of Interpretation
>
> * * * * * * *
>
> 10. General Interpretative Rules. For the purposes of these schedules—
>
> * * * * * * *
>
> (h) unless the context requires otherwise, a tariff description for an article covers such article, * * * whether finished or not finished.

Schedule 6, part 2 headnotes:

> 1. This part covers precious metals and base metals * * *, their alloys, and their so-called basic shapes and forms, and, in addition, covers metatl waste and scrap. * * * This part does not include—
>
> * * * * * * *
>
> (iv) Other articles specially provided for elsewhere in the tariff schedules, or parts of articles.
>
> * * * * * * *
>
> Subpart B. – Iron or Steel

Subpart B headnotes:

> 1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, * * *.
>
> * * * * * * *
>
> 3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:
>
> * * * * * * *

(i) Wire: A finished, drawn, nontubular product, of any cross-sectional configuration, in coils or cut to length, and not over 0.703 inch in maximum cross-sectional dimension. The term also includes a product of solid rectangular cross section, in coils or cut to length, with a cold-rolled finish, and not over 0.25 inch thick and not over 0.50 inch wide.

* * * * * * *

4. Additional duties: Iron or steel products which contain, by weight, one or more of the following elements in the quantity, by weight, respectively indicated:

over 0.2 percent of chromium, * * *

* * * * * * *

are subject to additional cumulative duties as provided for in items 607.01 * * *, but these duties apply only with respect to products covered by provisions which make specific reference to this headnote in the "Rates of Duty" columns.

* * * * * * *

	Iron or steel products containing any of the following metals in the quantity repectively specified (see headnote 4 of this subpart):	
607.01	Containing over 0.2 percent by weight of chromium----------	Additional duty of 0.9¢ per lb. on chromium content in excess of 0.2%
	* * * * * * *	
	Wire of iron or steel:	
	* * * * * * *	
	Round wire:	
	* * * * * * *	
609.45	Alloy iron or steel----------	10.5% ad val. +additional duties (see headnote 4)

534-450—74——3

Schedule 6, part 5:

	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; * * * and parts thereof:	
* * * * * * *		
	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:	
* * * * * * * *		
	Other:	
* * * * * * * *		
685.25	Other ----------	7% ad val.

This case has been submitted on a sample of the merchandise and the following agreed statement of facts:

It Is Hereby Stipulated and Agreed by and between counsel for the plaintiff and the Acting Assistant Attorney General for the United States:

1. That the plaintiff, Avins Industrial Products Co., has for several years been importing merchandise of the type which is the subject of this case.

2. That attached hereto and marked as Exhibit 1 is a representative sample of the merchandise which is the subject of this case.

3. That the instant merchandise was imported in varying lengths from approximately 12″ to 26.5″, including 12.5″, 18″, 18.813″, 18.75″, 20.25″, 24″, 24.25″, and 26.25″, pursuant to the specifications of the ultimate consumers, viz, the purchasers from the importer, who have assigned part numbers, as shown on the commercial invoices, to the various imported articles.

4. That the importations are describable as finished, drawn, nontubular products of Type 302 stainless steel not over 0.703″ in maximum cross-sectional dimension, which have been cut to the lengths shown in paragraph 3.

5. That Type 302 stainless steel products, including wire, are those which conform by metallurgical analysis to industry specifications established by the American Iron and Steel Institute.

6. That Type 302 stainless steel wire of varying length and diameter was used in the United States, at or immediately prior to importation of the instant merchandise, in a variety of applications that required one or more of the physical and mechanical

properties of Type 302, viz, corrosion resistance, electrical conductivity, thermal conductivity, tensile strength, resistance to bending, ability to polish efficiently, and pleasing appearance.

7. That some such uses were as follows: radio antenna sections, cross-wire welded grids for refrigeration trays and shelves, woven wire belts for conveyors, cooking skewers, screens and strainers for a variety of chemical processing applications.

8. That the imported merchandise was imported in the specific lengths and diameters required by the customers of the plaintiff with the diameter and length tolerances shown on the commercial invoices.

9. That the imported merchandise underwent, in order to improve its capability to telescope freely in its intended use, a straightening process after drawing, to a close tolerance, which is not always required of Type 302 stainless steel wire which is to be used in all of the aforesaid applications. Antenna sections normally require such a straightening process.

10. That in none of the known uses of Type 302 stainless steel wire other than as antenna sections was the wire of the identical diameter or identical length as the imported articles.

11. That the plaintiff resold the merchandise to its customers, six in number, whose businesses were the manufacturing of radio antennas generally for use on automobiles.

12. That the imported merchandise was used by these customers for manufacture into said antennas.

13. That the merchandise as used by these customers was generally subjected to an operation whereby one end of the wire was chamfered. After this operation, the chamfered end or either end if no chamfer is made, was press fitted into a small metal ball and the other end inserted into the base of an antenna or other section of a telescoping type antenna (for a telescoping antenna a small leaf spring was attached to the wire so as to maintain tension and electrical contact between sections of the antenna).

14. That the imported merchandise in their condition as imported were actually used only as described herein for the manufacture of antennas, and were essential to the proper functioning thereof; since as imported the merchandise had not been physically deformed by having been bent, stamped, pressed, or otherwise committed to shape, it would have been possible, by the modification of the material requirements and type and extent of fabrication inhering in other uses of Type 302 stainless steel wire, to make use in some of those applications of wire of the same diameter and lengths as the imported articles.

15. That "wire", which is a finished, drawn, non-tubular product, not over 0.703 inch in maximum cross-sectional configuration and which has been cut to length is sometimes so cut because the ultimate customer intends to utilize that length, without further cutting, in a predetermined manner.

* * * * * * *

Plaintiff claims that while the merchandise is describable as wire, it is also describable as parts of radio apparatus, and, therefore, by virtue of headnote 1(iv), schedule 6, part 2, *supra*, is precluded from classification as wire and is classifiable under item 685.25, *supra*. Antennas for use in automobile radios have been held dutiable under provisions in the tariff schedules for radiotelegraphic and radiotelephonic reception apparatus and parts. *Robert Bosch Corp. et al.* v. *United States*, 63 Cust. Ct. 187, C.D. 3895, 305 F. Supp. 921 (1969).

Defendant claims that the merchandise in its imported condition is still a material, wire, and is not classifiable under item 685.25.

The imported merchandise consists of a piece of wire made to certain specifications and cut to length. It falls within the definition of wire in headnote 3(i), schedule 6, part 2B, *supra*, which includes wire cut to length. After importation, one end of the wire is chamfered and press-fitted into a small metal ball and the other end inserted into the base of an antenna or a section of a telescoping antenna. As imported, the merchadise is not a finished part of a radio antenna.

However, if it is in fact and in law an unfinished part of a radio antenna, it would be classifiable under item 685.25 as a part of radio apparatus.

Under prior tariff acts it has been held that a provision for parts includes unfinished parts, where the article has been so far advanced in manufacture as to be dedicated to a specific use and to have no other use or ultimate intendment. *United States* v. *Schenkers, Inc.*, 17 CCPA 231, 233, T.D. 43669 (1929); *Waltham Watch Co.* v. *United States* (*Jaeger Watch Co., Inc., Party in Interest*), 25 CCPA 330, T.D. 49425 (1938); *Steinway & Sons* v. *United States*, 23 Cust. Ct. 30, C.D. 1185 (1949); *Geo. S. Bush & Co., Inc.* v. *United States*, 32 Cust. Ct. 316, C.D. 1620 (1954), and cases cited.

Interpretative rule 10(h) of the tariff schedules of the United States provides that "unless the context requires otherwise, a tariff description for an article covers such article, * * * whether finished or not finished." Accordingly, it has been held under the tariff schedules that unfinished drill collars are classifiable as finished parts for boring machinery and that unfinished tool tips and inserts are clasifiable as machinery parts of porcelain. *The Servco Company* v. *United States*, 68 Cust. Ct. 83, C.D. 4311 (1972), *aff'd sub nom.*, *United States* v. *The Servco Company*, 60 CCPA 137, C.A.D. 1098, 477 F. 2d 579 (1973); *American Feldmuehle Corp. et al.* v. *United States*, 64 Cust. Ct. 462, C.D. 4021 (1970). *Cf. United States* v. *J Gerber & Co., Inc., et al.*, 58 CCPA 110, C.A.D., 1013, 436 F. 2d 1390 (1971), and *John V. Carr & Son, Inc.* v. *United States*, 66 Cust. Ct.

316, C.D. 4209, 326 F. Supp. 973 (1971), where the rule was held inapplicable in view of an expressed policy of Congress.

It follows that merchandise which has progressed to the point of being an unfinished part of an article is precluded from classification under schedule 6, part 2, by headnote 1(iv), where it is elsewhere provided for as a part unless the context requires otherwise.

In the instant case, however, while plaintiff claims that the merchandise is identifiable as an unfinished part of a radio antenna, defendant contends it is still material.

The general rule is that a thing may be classed as an unfinished article if in its imported condition it has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit for use as that article and is incapable of being made into more than one article or class of articles. *United States* v. *Schenkers, Inc., supra; American Import Co.* v. *United States*, 26 CCPA 72, 74, T.D. 49612 (1938); *F. W. Myers & Co., Inc.* v. *United States*, 57 CCPA 87, 90, C.A.D. 982, 425 F. 2d 781 (1970); *Finn Bros. Inc.* v. *United States*, 59 CCPA 72, 75–76, C.A.D .1042, 454 F. 2d 1404 (1972).

Whether particular merchandise is a material or an unfinished article or part is a question which has been before the courts on many occasions, with differing results depending upon the facts and the statutory language in each case. *United States* (*American Sponge & Chamois Co., Inc., Party in Interest*) v. *Nylonge Corporation*, 48 CCPA 55, 61, C.A.D. 764 (1960). "The exact point in the processing of raw material at which it becomes a partly finished article or manufacture is a matter which must be determined on the basis of the circumstances of the particular case involved." *J. B. Henriques, Inc.* v. *United States*, 46 CCPA 54, 56, C.A.D. 695 (1958).

In the *Nylonge* case it was held that blocks of cellulose sponge were classifiable as finished or partly finished sponges on the ground that they were sufficiently advanced toward completion of the finished product as to be dedicated to their ultimate use. The court noted that the sole purpose of the manipulations after importation were to promote the marketability of the product. See also *R. J. Saunders & Co., Inc.* v. *United States*, 54 CCPA 53, C.A.D. 904 (1967).

In the *Henriques* case, rectangular pieces of acrylic resin cut to specific sizes for use in making transparent lids for ice cream dispensers were held to be partly finished articles rather than sheets on the ground that they were not adapted for any purpose other than making lids.

Other cases have held imported mechandise to be material even though used exclusively for one particular purpose or cut to specific sizes making it adaptable for a certain use. *United States* v. *The*

Harding Co., 21 CCPA 307, T.D. 46830 (1933), and *The Harding Co. et al.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936) (a manufacture made from asbestos yarn, wire and other materials, imported in rolls, used, after cutting, only to make brake linings); *American Import Co.* v. *United States*, *supra* (silk fishing-leader gut, used, after being cut to length, and loops tied, as fishing leaders); *B. A. McKenzie & Co., Inc., et al.* v. *United States*, 47 CCPA 42, C.A.D. 726 (1959) (plywood panels, called "doorskins" in dimensions suitable for use in the manufacture of panels for flush doors); *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161, 321 F. Supp. 1031 (1971) (shoe die knife steel and cutting rules used for making cutting dies.)

In *American Import Co.* v. *United States*, *supra*, the court noted (p. 75):

> The question presented is a perplexing one, the solution of which necessarily results in a somewhat anomalous situation. It cannot logically be denied that the imported article in 60-foot lengths is material for making leaders. All the witnesses agree that the only thing to be done to make the finished leader is to cut the material to length and, after soaking to soften the same, tie the loops. From the foregoing statement it is obvious that if the imported coils were cut to length suitable for making different lengths of leaders, they would be more nearly finished than as imported, and in addition to cutting the same to lengths, one of the loops was tied, they would be nearer finished than as imported.

The material versus articles issue has been presented in a number of cases under prior tariff acts involving wire and wire products.

In *Boye Needle Co.* v. *United States*, 5 Ct. Cust. Appls. 43, T.D. 34009 (1913), the merchandise consisted of round steel wire closely and permanently coiled into flexible and springlike tubes of wire. The court held it was not wire but a new product, a coiled wire spring, having a use as a spring which differed from that of simple wire.

In *Gerrard Wire Tying Machines Co.* v. *United States*, 42 Treas. Dec. 256, T.D. 39341 (1922), and *M. Martinez & Co.* v. *United States*, 24 CCPA 285, T.D. 48703 (1936), it was held that baling ties composed of wire cut to length and doubled back to form a loop were not wire material but manufactured articles. In the *Martinez* case the court pointed out (pp. 291–292):

> * * * It would seem that had Congress desired baling ties, commonly used for baling hay or other commodities, to take the same rate of duty provided for all wire so commonly used, it would have specified wire "cut to lengths," etc., as was done in the case of metal hoops and bands.

However, flat wire in coils, which after cutting to the required length and heated and forged to a so-called spoon, was used in textile machinery, was held to be a material which in its imported condition had neither the form nor shape of parts of textile machines and was not dedicated to a particular use. *Dehler Signoret Corp.* v. *Unietd States*, 7 Cust. Ct. 103, C.D. 545 (1941). See also *American Electro Metal Corp.* v. *United States*, 64 Treas. Dec. 822, Abstract 24886 (1933), holding that molybdenum wire imported in coils, used in incandescent lamps, X-ray apparatus, and ultraviolet lamps, was material which required further processing for use, and therefore could not be considered parts of articles for producing, rectifying, modifying, controlling or distributing electrical energy.

In *All America Cables & Radio, Inc.* v. *United States*, 16 Cust. Ct. 74, C.D. 987 (1946), wire imported in lengths of 17 feet and subsequently cut into shorter pieces and further manipulated for use in magnifiers in electric telegraph apparatus was held to be material and not part of such apparatus on the ground that it was not so far advanced as to be incapable of being made into more than one article and that its identity as a part was not fixed with certainty at the time of importation.

In the instant case the imported merchandise consists of wire of a certain diameter cut to length. It must be further manipulated for use as a radio antenna section. According to the stipulation, in none of the other known uses for type 302 stainless steel wire is the wire of the same diameter or length as the imported merchandise. However, it is also stated that it would have been possible to make use of wire of the same diameter and length in other applications, with some modification of the specifications. Thus, it is not clear that the imported merchandise is incapable of being made into more than one article.

Be that as it may, a reading of the pertinent provisions of the statute convinces me that in this instance, Congress has itself drawn the line differentiating material from unfinished articles or parts.

Whether merchandise is a material or an unfinished article depends to some extent on the degree of processing it has undergone. *American Import Co.* v. *United States*, *supra*. Here Congress has defined wire as including wire advanced as far as being cut to length. Bearing in mind the difficulties courts have experienced in determining the point at which a material becomes an unfinished article or part, the simplification which the Tariff Schedules of the United States was designed to provide,[1] and the fact that Congress has in this instance specified

[1] Customs Simplification Act of 1954, 68 Stat. 1136, sec. 101(a)(3); *F. L. Smidth & Company* v. *United States*, 56 CCPA 77, 81–82, C.A.D. 958, 409 F. 2d 1369 (1969).

wire cut to length, I am of opinion that Congress intended that merchandise encompassed within the definition in headnote 3(i), schedule 6, part 2B, should be classified as wire and not as an unfinished article or part of an article. Thus, the fact that the instant merchandise has been cut to length and is in certain dimensions making it particularly adaptable for use in producing radio antennas does not take it out of the category wire and into that of an unfinished part. *Cf. Pistorino & Company, Inc.* v. *United States*, 69 Cust. Ct. 48, C.D. 4373, 350 F. Supp. 1392 (1972), appeal dismissed March 27, 1973, and *Trans-Atlantic Company* v. *United States*, 70 Cust. Ct. 243, C.D. 4459 (1973), where the court found that the language in a superior heading in schedule 6, part 2B, "whether or not drilled, punched, or otherwise advanced" was a clear indication that an advancement even to the point of dedication was intended to be included therein so long as the article remained material. I conclude that the merchandise herein is material and not a part, finished or unfinished, within the intendment of Congress, and therefore is not excluded from classification under item 609.45, *supra*, by virtue of headnote 1(iv), schedule 6, part 2, *supra*.

For the reasons stated, the action is dismissed. Judgment will be rendered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 18, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/198	Ford, J. March 13, 1974	National Silver Company	71-9-01147	Item 533.75 10¢ per doz. pcs. plus 60% or 9¢ per doz. pcs. plus 54%	Item 553.71 45% or 40%	Judgment on the pleadings U.S. v. National Silver Co. (C.A.D. 1040)	Boston Mugs, of non-bone chinaware or of sub-porcelain
P74/199	Ford, J. March 13, 1974	The Westbrass Co.	71-10-01256	Item 657.20 13%	Item 653.95 11.5%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Stainless steel sink strainers and stainless steel tray plugs with long shanks
P74/200	Watson, J. March 13, 1974	S. Berger Import & Mfg. Corp.	66/21290-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruit, leaves etc.
P74/201	Watson, J. March 13, 1974	H.I.I. Corporation	70/22486	Item 380.39 19% on 100 cartons of boys' cotton-nylon twill pants	Regional commissioner directed to reliquidate entry and refund duties assessed on 51 cartons reported as manifested, not found	Summary judgment	New York Shortage of boys' cotton-nylon twill pants
P74/202	Watson, J. March 13, 1974	Westwood Import Co., Inc.	67/46355, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Houston Artificial flowers, etc.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/163	Ford, J. March 13, 1974	Consolidated Merchandising Corp. et al.	R68/17497, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R74/164	Ford, J. March 13, 1974	Ross Electronics Corp.	R71/47, etc.	Constructed value	Unit values as set forth in column number 3 of schedule attached to decision and judgment	Judgment on the pleadings	Chicago Combination articles each consisting of a radio, clock movement and lamp assembled in Taiwan (2500 radios covered by Court No. R71/49, entry No. 200763 not included)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/165	Ford, J. March 13, 1974	Spiegel, Inc., et al.	71-12-02122, etc.	Constructed value	Radios: $17.82, each, net packed Clock radio (exclusive of clock portion): $9.90, each, net packed Clocks: $3.60, each, net packed Earphones: $0.06, each, net packed Batteries: $0.22, each, net packed	Judgment on the pleadings	Chicago Radios assembled in and exported from Taiwan together with earphones and batteries and clock radios
R74/166	Ford, J. March 13, 1974	Westinghouse Electric Corp.	R70/289, etc.	Constructed value	Unit values set forth in schedule attached to decision and judgment in column 3 headed "Unit Value for Each Article of Merchandise, Net Packed"	Summary judgment	New York Combination articles consisting of radios and various other articles (batteries, earphones, clock movements, flashlights, cigarette lighters, pens, telephone pick-ups)
R74/167	Ford, J. March 13, 1974	Westinghouse Electric Corp.	71-8-00930, etc.	Constructed value	Unit values set forth in schedule attached to decision and judgment in column 4 headed "Unit Value for Each Article of Merchandise, Net Packed"	Judgment on the pleadings	New York Combination articles each consisting of a radio, flashlight, cigarette lighter, and watch movement, imported together with a battery, assembled in and exported from Taiwan

R74/168	Re, J. March 13, 1974	The Beton Co.	R58/23457, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/169	Re, J. March 13, 1974	Geo. S. Bush & Co., Inc., et al.	R59/855, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/170	Re, J. March 13, 1974	Geo. S. Bush & Co., Inc. et. al.	R59/18917, etc.	Export value Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/171	Re, J. March 13, 1974	Getz Bros. & Co., Inc., et al.	R58/908, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Philadelphia Japanese plywood
R74/172	Re, J. March 13, 1974	Maher & Company et al.	R61/19517, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co.et al. (C.A.D. 927)	Houston Japanese plywood
R74/173	Re, J. March 13, 1974	Robert S. Osgood et al.	R58/18183, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk-Newport News Japanese plywood
R74/174	Re, J. March 13, 1974	Wood-Mosaic Industries, Inc.	R61/23328, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Boston Japanese plywood
R74/175	Re, J. March 13, 1974	Zeesman Plywood Corp. et al.	R58/1356, etc.	Export value: Net appraised value less 7 ¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/176	Re, J. March 13, 1974	A. B. Zwebell	R59/3372, etc.	Export value: Net appraised value less 7 ¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/177	Re, J. March 15, 1974	B.R. Anderson & Co. et al.	R61/4172, etc.	Export value: Net appraised value 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood

Judgment of The United States Customs Court In Appealed Case

MARCH 11, 1974

APPEAL 5521.—United States *v.* L. Batlin & Son, Inc.—BIRD CAGE LAMP SETS—ILLUMINATING ARTICLES—ELECTRICAL ARTICLES—SUMMARY JUDGMENT—TSUS.—C.D. 4365 affirmed December 6, 1973. C.A.D. 1111.

Appeal To United States Court of Customs and Patent Appeals

APPEAL 74–24.—Sol Kahaner & Bro. *v.* United States.—FABRICS OF SPECIAL CONSTRUCTION—FRINGES OR OTHER TRIMMINGS—NONELASTIC BRAIDS AND OTHER BRAIDED MATERIAL FOR HEADWEAR—TSUS. Appeal from C.D. 4480, rehearing denied January 7, 1974.

This case was previously the subject of a decision denying plaintiff's motion for summary judgment. *Sol Kahaner & Bro.* v. *United States*, 70 Cust. Ct. 341, C.R.D. 73–5 (1973). The record in *Sol Kahaner & Bro.* v. *United States*, 60 Cust. Ct. 94, C.D. 3272 (1968), decided on rehearing, 65 Cust. Ct. 512, C.D. 4130 (1970), was incorporated herein.

Merchandise (except that covered by protest 66/76518) used to make or ornament headwear was assessed at 42.5 percent ad valorem under item 357.70, Tariff Schedules of the United States, as fringes or other trimmings. The merchandise covered by protest 66/76518, which includes item No. 3116/3 (exhibit 6) was assessed at 42.5 percent under item 348.05 as braid not suitable for making or ornamenting headwear. Defendant in its amended answer abandoned this classification and affirmatively claimed the proper classification to be under item 357.70, *supra*. In addition, defendant moved to serve protest 66/25961 and dismiss the action for failure to prosecute. The motion was denied. Plaintiff claimed that the merchandise was properly dutiable at 18 percent under item 703.95 as nonelastic braids or braided material suitable for making or ornamenting headwear. The court overruled the claims in the protests and dismissed the action.

It is claimed that the Customs Court erred in not sustaining the claims in the protests and in not entering judgment for the plaintiff; in finding and holding that the involved merchandise is not properly classifiable under item 703.95, *supra*, but classifiable under item 357.70, *supra;* in not giving full, proper and controlling consideration to all the statutory language of item 703.95 and the legislative history thereof; and in finding and holding that merchandise made on a knitting machine is excluded from the purview of item 703.95.

Tariff Commission Notice

Investigation by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *March 28, 1974.*

The appended notice relating to an investigation by the United States Tariff Commission is published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA-F-62]

PETITION OF HERR MANUFACTURING CO., INC., FOR A DETERMINATION UNDER SECTION 301(c)(1) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 on behalf of the Herr Manufacturing Co., Inc., Tonawanda, New York, the United States Tariff Commission, on March 15, 1974, instituted an investigation under section 301(c)(1) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with spinning and twisting ring travelers, spinning and twisting rings, flyers, flyer wires and traveler inserts (of the types provided for in items 670.68 and 670.74 of the Tariff Schedules of the United States) produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued March 18, 1974.

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